Supreme Court, U.S.
FILED
99 421 SEP - 9 1999
OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

Frederick Collins Fermin
And On Behalf of
The Estate of Petra V. Fermin,
Petitioner,

v.

United States of America,
Respondent.

Petition for a Writ of Certiorari
To the United States Court of Appeals
Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

Frederick Collins Fermin
Pro Se
13906 Norland Drive
San Antonio, TX 78232-4921
(210) 494-0728

34 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether United States Court of Appeals for The Fifth Circuit violated **Amended** Federal Rules of Appellate Procedure Title 28, U.S.C.A. Rule 38.

2. Whether United States Court of Appeals for the Fifth Circuit has sovereign immunity for violation of civil right.

3. Whether United States Court of Appeals for the Fifth Circuit, violated Petitioner's due process protection pursuant to the 5th and 14th Amendments of the United States Constitution.

4. Whether United States District Court abused its authority upon failure to obtain leave from the U.S. Court of Appeals Fifth Circuit for the purpose of making correction of the Order and Final Judgment as required by Federal Rules of Civil Procedure U.S.C.A. Title 28, Rule 60(a), while the appeal was pending on April 16, 1998 date of Court Order.

PARTIES TO THE PROCEEDINGS BELOW

All parties to the proceedings in the courts below are listed in the caption.

BEST AVAIL

TABLE OF CONTENTS

PAGE

QUESTIONS PRESENTED FOR REVIEW i

LIST OF PARTIES ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

OPINIONS BELOW 2

JURISDICTION ..... 1 - 2

CONSTITUTIONAL PROVISIONS 3

STATEMENT OF THE CASE AS PER THE QUESTIONS PRESENTED FOR REVIEW 3

REASONS FOR GRANTING THE WRIT OF CERTIORARI 5

1. United States Court of Appeals Fifth Circuit Panel Judges JONES, SMITH, and DUHE, did not have the authority to impose sanctions upon Petitioner Fermin

2. The Fifth Circuit Court of Appeals has entered a decision in conflict with the decision of the United States Supreme on the same important matter of sanctions

LABLE COPY

3. United States District Court violated Federal Rules of Civil Procedure Title 28, U.S.C.A. Rule 60(a), while case was pending on appeal

CONCLUSION 6

APPENDIX A - Appeal 1a

APPENDIX B - On Petition for Rehearing En Banc 5a

APPENDIX C - Release of Judgment 7a

APPENDIX D - Order on Motion for Leave for Amendment of Complaint 10a

APPENDIX E - Motion for Leave for Amendment of Complaint 12a

APPENDIX F- Letter to Chief Judge 14a

APPENDIX G - Civil Docket 17a

TABLE OF AUTHORITIES

PAGE

Britt v. Whitmire, 956 F.2d 509 (5th Cir. 1992) 4

Coghlan v. Starkey, 852 F.2d 806, 808 (5th Cir. 1988) 5

Webster Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 29 L.Ed. 2d, 619 S.Ct. 1999 (June 21, 1971) 4

Winchester v. U.S. Attorney for the Southern District of Texas, 68 F.3d 947 (5th Cir. 1995) 4

FEDERAL STATUTES

United States Code Title 28, §§ 1291 and 2106 2

United States Code Title 38, §§ 1315(e) and 1506a 6

42 U.S.C. §§ 12101 and 6106 6

Amended Federal Rules of Appellate Procedure Title 28, U.S.C.A. Rule 38 ..... 2 - 5

Amended Federal Rules of Appellate Procedure Title 28, U.S.C.A. Rule 4a(4)(B)(i) 4

Federal Rules of Civil Procedure Title 28, U.S.C.A. Rule 60(a) 6

5th and 14th Amendments of the United States Constitution 3

State of Texas Constitution Article 1, §§ 3 and 19 4

In the
Supreme Court of the United States

No. _____

Frederick Collins Fermin
And On Behalf of
The Estate of Petra V. Fermin,
Petitioner,

v.

United States of America,
Respondent.

Petition for a Writ of Certiorari
To the United States Court of Appeals
Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

Petitioner Frederick Collins Fermin prays that the Court issue a writ of certiorari to review the judgment of the United States Court of Appeals, Fifth Circuit, in this case.

OPINION BELOW

The opinion of the U.S. Court of Appeals Fifth Circuit is unpublished and is reprinted in the appendix. See Appendix A-1a. The Per Curiam Order Denying Petition for Rehearing En Banc is not reported and is reprinted in the appendix. See Appendix B-5a.

JURISDICTION

Fifth Circuit Court of Appeals had federal jurisdiction in the court of first instance under 28 U.S.C. § 1291 pursuant to U.S. Supreme Court Rule 14(i)(ii). The Fifth Circuit court of Appeals rendered its opinion and judgment on April 19, 1999. A timely filed petition for rehearing was denied on August 2, 1999. This petition has been filed within ninety days of the denial of the petition for rehearing and is therefore timely pursuant to 28 U.S.C. Section 2101(c)(1994) and Supreme Court rule 13. The U.S. Supreme court jurisdiction is invoked pursuant to 28 U.S.C. §1254(1)(1993) and 28 U.S.C. § 2106, in reference to U.S. Supreme Court rule 10(c). $300.00 was paid pursuant to U.S. Supreme court Rule 38. Three copies of the petition have been served upon the Solicitor General pursuant to U.S. Supreme court Rule 29(3)(5). The Petitioner certified that the petition is as per the U.S. Supreme Court Rules dated May 3, 1999.

CONSTITUTIONAL PROVISIONS

Violation of the 5th and 14th Amendments of the United States Constitution, and State of Texas Constitution, Article 1, §§ 3 and 19, in reference to Petitioner's Due Process Protection as authorized in 1994 Federal Rules of Appellate Procedure Title 28, U.S.C. Rule 38.

STATEMENT OF THE CASE AS PER THE QUESTIONS PRESENTED

1. In the Appendix A-1a, 2a, 3a, and 4a the judgment and opinion certify that United States Court of Appeals has the authority to impose sanctions upon Petitioner Fermin, in reference to the authority through the case of *Coghlan v. Starkey*, 852 F.2d 806, 808 (5th Cir. 1988). See appendix F-14a-15a.

2. The decision to impose sanctions on Petitioner Fermin is in direct violation of the **Amended** Federal Rules of Appellate Procedure Title 28, U.S.C.A. Rule 38. The court's opinion is misleading, because Petitioner did not pay for sanctions. See Appendix C-7a.

3. The Panel of Circuit Judges do not have sovereign immunity for the violation of

Petitioner Fermin's civil right under the case of *Webster Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 29 L.Ed 2d, 619 S.Ct. 1999 (June 21, 1971). The Circuit Judges JONES, SMITH and DUHE, violated Petitioner Fermin's Due Process Protection under the Constitution of the State of Texas Article 1,§§ 3 and 19.

4. The record regarding civil docket sheet number 17, verifies that Notice of Appeal was filed February 9, 1998, U.S. Court of Appeals Case No. 98-50142. In Appendix D-10a and 11a, is U.S. District Court Order filed April 16, 1998. This Court Order is legally void because the U.S. District Court did not obtain leave from the Appellate Court as required in Federal Rules of Civil Procedure Title 28, U.S.C.A. Rule 60(a), while the appeal is pending. U.S. Court of Appeals Case No. 98-50142 is not frivolous because the panel of Circuit Judges are not in court of competent jurisdiction, based on the fact that the panel failed to comply with Federal Rules of Appellate Procedure Title 28, U.S.C.A. Rule 4a(4)(B)(i). The Panel concerning U.S. Court of Appeals Case No. 98-50483, the Panel cited *Winchester v. U.S. Attorney for the Southern District of Texas*, 68 F.3d 947 (5th Cir. 1995) and *Britt v. Whitmire*, 956 F.2d 509 (5th Cir. 1992). These two cases are in conflict with

Federal Rules of Civil Procedure Title 28, U.S.C.A. Rule 60(a) if appeal is pending in the U.S. Court of Appeals.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

1. United States Court of Appeals Fifth Circuit Panel Judges JONES, SMITH and DUHE, did not have the authority to impose sanctions upon Petitioner Fermin because of failure to first file motion or give notice to petitioner Fermin before imposing sanctions as required under 1994 Amended F.R.A.P. Rule 38. See appendix F-16a.

2. The Fifth Circuit Court of Appeals has entered a decision in conflict with F.R.A.P. Rule 38, and the decision of the United States Supreme Court on the same important matter of sanctions. 1994 Amended Federal Rules of Appellate Procedure Title 28, U.S.C.A. Rule 38, is the correct authority for imposing sanctions, not the case of *Coghlan v. Starkey*, 852 F.2d 806, 808 (5th Cir. 1988) as stated in the opinion. 1994 F.R.A.P. Rule 38 reads as follows:

ADVISORY COMMITTEE NOTES

The amendment requires that before a court of appeals may impose sanctions, the person to be sanctioned must have notice and an opportunity

to respond. The amendment reflects the basic principle enunciated in the Supreme Court's opinion in *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 767 (1980).

3. The Fifth Circuit Court affirming that U.S. District Court did not commit error concerning District court Order filed April 16, 1998, is erroneous. The Fifth Circuit Court is granting the District Court the violation committed that it is not necessary to obtain leave from the appellate court before making correction on final judgment while the case is on appeal, which is in direct violation of Federal Rules of Civil Procedure Title 28, Rule 60(a). See appendix D 10a.

4. Petitioner's amended complaint has drawn into question the constitutionality of the Act of Congress that has established age discrimination against veterans 72 years of age in 38 U.S.C.§ 1315(e) and 38 U.S.C. § 1506(a), which is a violation under 42 U.S.C. § 12101, et seq and 42 U.S.C. § 6106. See appendix G-20a, item 20.

Conclusion

The main reason for submitting the reprinted U.S. District Court Civil Docket Sheets, is to verify that the U.S. District Court failed to request leave from the U.S. Court of Appeals Fifth Circuit, for the

purpose of making correction on the final judgment as required in Federal Rules of Civil Procedure Title 28, U.S.C.A. Rule 60(a). In Appendix G, that is the U.S. District Court Civil Docket Sheets. Notice Docket Sheet item 17, verify that Petitioner's Notice of Appeal was filed on February 9, 1998. Now notice Docket Sheet item 19, that certifies that the U.S. District Court signed the Order on April 16, 1998, while the appeal was pending in the appellate court, which is in violation of Federal Rules of Civil Procedure Title 28, U.S.C. Rule 60(a). The above official record confirms that the Fifth Circuit Court opinion is misleading in reference that U.S. District Court did not abuse its discretion. The key to the case is that the complaint was **dismissed without prejudice**. See Civil Docket Sheet item 16, in Appendix G-19a.

Respectfully submitted,

Frederick Collins Fermin, Pro Se
13906 Norland Drive
San Antonio, Texas 78232-4921
(210)494-0728

APPENDICES

APPENDIX A

[Filed Apr. 19, 1999]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-50483
Conference Calendar

FREDERICK COLLINS FERMIN,
and on behalf of the States of Petra V. Fermin,
Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,
Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-97-CV-1159

Before JONES, SMITH and DUHÉ, Circuit Judges.
PER CURIAM:*

---

* Pursuant to 5th Cir.R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

Frederick Collins Fermin appeals the district court's denial of his post-judgment motions to reopen this case to allow him to amend his complaint to add new claims. Fermin argues that the district court abused its discretion for failing to make a decision on his motion to amend his complaint as authorized by Fed.R.Civ.P. 15(a). He also argues that the district court abused its authority by changing his Fed. R. Civ. P. Rule 60(b) motion to a Rule 60(a) motion.

Fermin's only options were to move for relief from judgment or to appeal. *Whitaker v. City of Houston*, 963 F.2d 831, 834 (5th cir. 1992). A party desiring to amend after judgment has been entered is obliged first to obtain relief from judgment. *Briddle v. Scott*, 63 F.3d 364, 379-81 (5th Cir. 1995). Fermin appealed first. Once he appealed, the district court no longer had jurisdiction to grant Rule 60(b) relief without leave of the Court of Appeals. *Winchester v. U.S. Atty. For southern Dist. Texas*, 68 F.3d 947, 949 (5th cir. 1995). Because Fermin did not seek substantive relief from judgment, his motion was not calculated to reopen the judgment allow for amendment of the complaint. *Briddle*, 63 F.3d at 379-81.

Although Fermin cited to Rule 60(b), Fermind did not state upon which grounds he sought relief from judgment, and his motion to amend his complaint did not seek to challenge the judgment substantively. He sought only to correct the district court's erroenous citation to a statute. The district court had the authority to and did not abuse its discretion in construing his motion as seeking only a clerical correction to the citation of the statute pursuant to Rule 60(a). *Britt v. Whitmire*, 956 F.2d 509, 512-13 (5th Cir. 1992).

The district court did not abuse its discretion in denying Fermin's motions to reopen this case, after final judgment had been entered and while his appeal was pending, to amend his complaint to add new claims. *See Rourke v. Thompson*, 11 F.3d 47, 51 (5th Cir. 1993) (applying abuse of discretion standard).

We have reviewed the record and the district court's orders and find no issue of arguable merit. Accordingly, we dismiss the appeal as frivolous. *Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983); 5th Cir. R. 42.2.

This is not the first frivolous appeal brought by Fermin. We sanctioned Fermin for bringing a frivolous appeal in *fermin v. National Home Life Assurance Company*, No. 93-8645 (5th Cir. Jan. 14, 1994) (unpublished). The district court dismissed his claims as res judicata, and this court found that Fermin's arguments that his claims were not barred by res judicata were frivolous. Once again, after this court dismissed his first appeal in this case as frivolous in *Fermin v. United States of America*, No. 98-50142 (5th Cir. May 7, 1998) (unpublished), Fermin is seeking a second bite at the apple. Therefore, IT IS ORDERED that Fermin is sanctioned** $105, thus doubling his cost of bringing this appeal. IT IS ALSO ORDERED that Fermin remit payment to the Clerk of this court. The Clerk of this Court and the clerks of all federal district courts within this Circuit are directed to refuse to file a pro se civil complaint or appeal by

Fermin unless Fermin submits proof of satisfaction of this sanction.

APPEAL DISMISSED; SANCTION IMPOSED.

** The appellee has not moved for sanctions. We have the authority to impose sanctions sua sponte. *See Coghlan v. Starkey*, 852 F.2d 806, 808 (5th cir. 1988).

APPENDIX B

[Filed Aug. 2, 1999]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-50483

FREDERICK COLLINS FERMIN,
and on behalf of the Estate of Petra V. Fermin,

Plaintiff-Appelant,

versus

UNITED STATES OF AMERICA,

Defendant-Appellee.

- - - - - - - - - - - - -

Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-97-CV-1159

- - - - - - - - - - - -

ON PETITION FOR REHEARING EN BANC

(Opinion April 19, 1999)

Before JONES, SMITH and DUHÉ, Circuit Judges.

PER CURIAM:

No member of the panel nor Judge in regular active service of the Court having requested that the Court be polled on reharing *en banc*, the Petition for Rehearing *En Banc* is DENIED. The clerk of this court cautioned appeallant that a frivolous petition for rehearing *en banc* could result in sanctions. This petition is frivolous. Fermin is ordered to pay $105 to the clerk of this court within twenty days from the date of this order.

ENTERED FOR THE COURT:

S/EDITH H. JONES
EDITH H. JONES
UNITED STATES CIRCUIT JUDGE

[CLERK'S NOTE:
SEE FRAP AND LOCAL
RULES 41 FOR STAY OF THE
MANDATE.]

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FREDERICK C. FERMIN	§	
Plaintiff,	§	
	§	
V.	§	SA 93 CA 0280
	§	
NATIONAL HOME LIFE	§	
ASSURANCE COMPANY,	§	
Defendant.	§	

RELEASE OF JUDGMENT

STATE OF PENNSYLVANIA	§
	§
COUNTY OF CHESTER	§

WHEREAS, on the 3rd day of September, 1993, in the United States District Court for the Western District of Texas, San Antonio Division, in a case styled Frederick C. Fermin v. National Home Life Assurance Company, Civil Action No. SA 93 CA 0280, National Home Life Assurance Company, Defendant, recovered a judgment for sactions (Judgment) against Frederick C. Fermin, for the sum of $5,924.04; and

WHEREAS, in Case No. 93-8645 in the United States Court of Appeals for the Fifth Circuit, the Fifth Circuit affirmed the Judgment and awarded National Home Life Assurance Company double costs as a sanction on appeal;

WHEREAS, national Home Life Assurance Company, the party entitled to receive payment on the Judgment, including the double costs awarded on appeal, has agreed to release Frederick C. Fermin from any liability arising out of the Judgment; and

WHEREAS, National Home Life Assurance Company has settled its claim against Frederick C. Fermin;

NOW, THEREFORE, I Arthur Klose, Vice President of National Home Life Assurance Company, acknowledge settlment of the Judgment and release Frederick C. Fermin his heirs and assigns, from any and all liability arising out of the Judgment, including the double costs awarded on appeal.

WITNESS MY HAND this 19th day of May, 1994.

S/_____
Arthur Klose

BEFORE ME, the undersigned Notary Public, on this day personally appeared Arthur Klose, vice President of National Home Life Assurance Company, known to me to be the person whose name was subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

SUBSCRIBED AND SWORN TO BEFORE ME on the 19th day of May, 1994, to certify which witness my hand and official seal.

S/Margretta L. Hearn
Notary Public in and for the
State of Pennsylvania

Notarial Seal
Margretta L. Hearn, Notary Public
East Whiteland Twp., Chester County
My Commission Expires Sept. 21, 1996
Member, Pennsylvania Association of Notaries

Appendix D

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FREDERICK COLLINS FERMIN, et al	§	
Plaintiff,	§	
	§	
I.	§	**Civil Action No. SA-97-CA-1159**
	§	
UNITED STATES OF AMERICA,	§	
Defendant	§	

ORDER

On this date came to be considered the Motion for Leave for Amendment of Complaint. After careful consideration the motion will be treated as a motion under rule 60(a), and will be granted.

The Pro-Se Plaintiff correctly points out that the Court cited 28 U.S.C. § 511 when it should have cited 38 U.S.C. § 511. The Plaintiff requests that this clerical mistake be corrected pursuant to Rule 60(a).

Accordingly, it is hereby ORDERED that the Court's Order filed January 20, 1998 be and is CORRECTED such that all citations therein to "28 U.S.C. § 511" will be treated as citations to 38 U.S.C. § 511.

SIGNED and ENTERED this 15th of April 1998.

S/
EDWARD C. PRADO
U. S. DISTRICT JUDGE

APPENDIX E

COURT COPY

FILED
1998 FEB 23 A 10: 14
IN THE U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY S/ NS
DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FREDERICK COLLINS FERMIN, AND ON BEHALF OF THE ESTATE OF PETRA V. FERMIN, PLAINTIFFS	§	
VS.	§	CIVIL ACTION NO. SA-97-CA-1159-EP
UNITED STATES OF AMERICA, DEFENDANT.	§	

MOTION FOR LEAVE FOR AMENDMENT OF COMPLAINT

Plaintiffs move the honorable Court pursuant to Fed. R. Civ. P. 60(b). Legal grounds for reopening the case if the fact the United States District Court Order filed on January 20, 1998, is

erroneous in reference to the statute cited for the doctrine of sovereign immunity. The correct law is 38 U.s.c. 511(a), not 28 U.S.C. 511. The mistake can be corrected via Fed.R.Civ.P. 60(b). The amendment to the complaint is to increase the claims. Therefore, the new claims are paragraphs 9,m 10, 11, 12 and 13, as stated in the NOTICE OF APPEAL TO THE FIFTH CIRCUIT.

Respectfully submitted,

S/_____
Frederick C. Fermin, Pro Se

CERTIFICATE OF SERVICE

I, Frederick C. Fermin, certify under the penalty of perjury pursuant to United States Code Title 28, Section 1746, that the PLAINTIFF'S MOTION FOR LEAVE FOR AMENDMENT OF COMPLAINT, was mailed by First Class Mail Prepaid and sent to Mr. GARY L. ANDERSON, Asstant (sic) U.S. Attorney 601 N.W. Loop 410, Suite 600 San Antonio, Texas 78216-5512. Date of service was on February 23, 1998.

SIGNED BY S/_____

Frederick C. Fermin
13906 Norland Drive
San Antonio, Texas
78232-4921
(210) 494-0728

APPENDIX F

May 29, 1999

Chief Judge
United States Court of Appeals
For the Fifth Circuit
600 Camp Street
New Orleans, LA 70130

RE: *Frederick Collins Fermin and on Behalf of the Estate of Petra V. Fermin vs. United States of America*; Case #98-50483

Sir:

This letter is for the purpose of avoiding embarrassment for the entire Fifth Circuit, in reference to the fact of the U.S. Court of Appeals Panel's Court Order charging Appellant Fermin with imposed sanctions, which is a violation of the appellant's due process protection pursuant to the Amended Federal Rules of appellate Procedure Rule 38. In other words, the panel's official decision or opinion is negligence under the cases of *Molzof v. U.S.*, 502 U.S. 301, 116 L.Ed.2d 731, 112 s.Ct. 711 (1992); *Bivens*, 403 U.S. 388, 394, 91 S.Ct. 1999, 2005, 29 L.Ed.2d 619 (1971). In order to avoid embarrassment for the Fifth Circuit, I strongly suggest that you as the Chief Judge request the United States Federal Government to offer Appellant Fermin a Compromise Settlement Agreement within 15 days of your request. If the government will agree, then the Fifth Circuit does not have to explain the tort based on negligence which is a violation of the 5th Amendment.

Your answer will be appreciated.

Sincerely,

S/
Frederick C. Fermin, Pro Se
13906 Norland Drive
San Antonio, Tx 78232-4921
(210) 494-0728\

THIS LETTER IS SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED POSTAL OFFICIAL NUMBER Z 213 252 229

Rule 38. Frivolous Appeal – Damages and Costs

If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee.
(As amended Apr. 29, 1994, eff. Dec. 1, 1994; April 24, 1998, eff. Dec. 1, 1998.)

ADVISORY COMMITTEE NOTES

1994 Amendments

The amendment requires that before a court of appeals may impose sanctions, the person to be sanctioned must have notice and an opportunity to respond. The amendment reflects the basic principle enunciated in the Supreme Court's opinion in *Roadway Express, inc. v. Piper*, 447 U.S. 752, 767 (1980), that notice and opportunity to respond must precede the imposition of sanctions. A separately filed motion requesting sanctions constitutes notice. A statement inserted in a party's brief that the party moves for sanctions is not sufficient notice. Requests in briefs for sanctions have become so commonplace that it is unrealistic to expect careful responses to such requests without any indication that the court is actually contemplating such measures. Only a motion, the purpose of which is to request sanctions, is sufficient. If there is no such motion filed, notice must come from the court. The form of notice from the court and of the opportunity for comment purposely are left to the court's discretion.

APPENDIX G

APPEAL

U.S. District Court
Western District of Texas (San Antonio)

CIVIL DOCKET FOR CASE #: 97-CV-1159

Fermin v. United States Filed: 09/15/97
Assigned to: Honorable Edward C. Prado
Demand: $5,000,000 Nature of Suit: 360
Lead Docket: None Jurisdiction: US Defendant
Dkt # in Fifth Circuit: is: 98 - 50483
Dkt # in Fifth Circuit: is: 98 - 50142
Cause: 42: 1983 Civil Rights

FREDERICK COLLINS FERMIN, and on behalf of the Estate of Petra V. Fermin plaintiff	Frederick Collins Fermin [COR LD NTC] [PRO SE] 13906 Norland Dr. San Antonio, TX 78232-4921 (210) 494-0728
v.	
UNITED STATES OF AMERICA defendant	Gary L. Anderson 210/530-6175 [COR LD NTC] Assistant United States Attorney 601 NW Loop 410, #600 San Antonio, TX 78216 (210) 530-6120

5:97cv1159		Fermin v. United States	APPEAL
9/15/97	-	Case assigned to Honorable Edward C. Prado (wg)	
9/15/97	1	Complaint filed. Filing Fee: $150.00 Receipt #147585 (Pages: 29) (wg)	
9/15/97	-	Summons issued for United States of America, U.S. Attorney's Office (Bill Blagg) & U.S. Attorney General (Janet Reno). (wg)	
9/22/97	2	Return of service executed as to United States by certified mail on U.S. Attorney on 9/16/97 (cw) [Entry date 9/24/97]	
9/22/97	3	Return of service executed as to United States by service on Lily Fetzer, Dept. of Veterans Affairs by certified mail on 9/18/97 (cw) [Entry date 9/24/97]	
9/22/97	4	Return of service executed as to United States by certified mail on Janet Reno, U.S. Attorney General on 9/17/97 (cw) [Entry date 09/24/97]	
10/27/97	5	Submission of additional information to support claims filed by Frederick Collins Fermin (cw) [Entry date 10/28/97]	
11/17/97	6	Motion by United States to dismiss (cw) [Entry date 11/18/97]	
11/19/97	7	Response by Frederick Collins Fermin in opposition to defendant's motion to dismiss [6-1] (cw)	
11/20/97	8	Plaintiff's Submission for Verification of Military Service (cw)	
12/9/97	9	Order Concerning Consent Trials, Discovery, Pretrial Matters and Pretrial Order (CW) [Entry date 12/10/97]	
12/9/97	9	Scheduling order setting: Joining of parties, amending of pleadings on 4/7/98; Deadline for	

		filing of all motions 6/22/98; Discovery cutoff 6/8/98; Pretrial order to be submitted on or before 8/10/98; Alternate Dispute Resolution Report due by 3/9/98; Bench Trial for 9:00 8/24/98 (cw) [Entry date 12/10/97]
12/10/97	10	Motion by Frederick Collins Fermin for leave to cite U.S. Supreme court's interpretation of Title 5, USC 702. (Cw)
1/2/98	11	Non-consent to proceed before a U.S. Magistrate by Frederick Collins Fermin (cw) [Entry date 01/06/98]
1/6/98	12	Non-consent to expedited docket and non-consent to proceed before a U.S. Magistrate by United States (cw) [Entry date 01/07/98]
1/6/98	13	Designation of potential witness filed by Frederick Collins Fermin (cw) [Entry date 01/07/98]
1/6/98	14	Response to scheduling order paragraph 6 by Frederick Collins Fermin (cw) [Entry date 01/07/98]
1/20/98	15	ORDER granting defendant's motion to dismiss, such that the plaintiffs' complaint is DISMISSED WITHOUT PREJUDICE. [6-1] (cw) [Entry date 01/21/98]
1/20/98	16	JUDGMENT. In accordance with the Order entered by this Court on this same date, it is hereby ORDERED, ADJUDGED and DECEED all claims in the above styled and numbered cause are DISMISSED WITHOUT PREJUDICE. (pages: 1) (cw) [Entry date 01/21/98]
1/20/98	–	Case closed (cw) [Entry date 01/21/98]
2/9/98	17	Notice of appeal by Frederick Collins Fermin

(lp) [Entry date 02/10/98]

2/9/98 - USCA appeal fees paid for appeal [17-1] : Appeal Fee $105.00 Receipt #149815 (lp) [Entry date 02/10/98]

2/10/98 - Notice of appeal and certified copy of docket to USCA: appeal [17-1] (lp)

21/23/98 18 Motion by Frederick Collins Fermin to amend complaint [1-1] (lp) [Entry date 02/24/98]

2/24/98 - Return of appeal information sheet received. Appeal [17-1] USCA NUMBER: 98-50142 (lp)

3/20/98 - Certified and transmitted record on appeal to U.S. Court of Appeals: appeal [17-1] (lp)

4/16/98 19 Order granting plaintiff's motion to amend complaint (treated as a motion under Rule 60)a). Accordingly, it is ORDERED that the Court's Order filed 1/20/98 be and is CORRECTED such that all citations therein to "28 USC ĭ511" will be treated as citations to 38 USC ĭ511. [1-1] [18-1] (cw)

4/20/98 20 Motion by Frederick Collins Fermin to extend time to file amended complaint (cw) [Entry date 04/21/98]

5/4/98 - Received "Amended Complaint based on being deprived of due process proection (sic) pursuant to 5th and 14th Amendments and breach of fiduciary agreement also age discriminatin (sic) against veterans 72 years old" (ac) [Entry date 05/05/98]

5/11/98 21 Notice of appeal by Frederick Collins Fermin (lp) [Entry date 05/13/98]

5/11/98 - USCA appeal fees paid for appeal [21-1] : Appeal Fee: $105.00 Receipt #151336 (lp)

		[Entry date 05/13/98]
5/13/98	-	Notice of appeal and certified copy of docket to USCA: appeal [21-1] (lp)
5/26/98	22	Order denying motion to extend time to file amended complaint [20-1] (ac) [Entry date 05/27/98]
6/1/98	23	Notice of appeal by Frederick Collins Fermin re: appeal [21-1] (lp) [Entry date 06/03/98]
6/3/98	-	Return of appeal information sheet received. Appeal [21-1] USCA NUMBER: 98-50483 (lp)
6/3/98	-	USCA appeal fees paid for appeal [21-1] : Appeal Fee: $105.00 Receipt #151643 (lp)
6/3/98	-	Notice of appeal and certified copy of docket to USCA: appeal [21-1] (lp)
6/12/98	-	Transmitted supplemental record on appeal: appeal [21-1] (lp)